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***Via Certified Mail –
Return Receipt Requested***

January 3, 2018

JAN 11 2018

CalMat Co. dba Vulcan Materials Company, Western Division
Attn: Head of Agency
3200 North San Fernando Road
Los Angeles, CA 90065

Vulcan Materials Company, Western Division
Sanger Sand and Gravel Plant
Attn: Onsite Manager
17041 E. Kings Canyon Road
Sanger, CA 93657

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Head of Agency and Onsite Manager:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring as a result of discharges of contaminated effluent from the Sanger Sand and Gravel Plant located at 17041 E. Kings Canyon Road in Sanger, California (the "Facility").

River Watch hereby places CalMat Co., and Vulcan Materials Company (hereafter collectively, the "Discharger"), as owner and operator of the Facility on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations in the Facility's National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the Discharger is violating the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Facility’s operations in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region (“RWQCB”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the Discharger with its NPDES permit for the Facility.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated.*

River Watch identifies the Discharger’s violations of permit conditions or limitations set forth in RWQCB Order No. R5-2013-0105, NPDES Permit No. CA0078174 (“*Waste Discharge Requirements for the Calmat Co., Walter A. and Elizabeth A. Baun, and Darrell B. and Janet Delevan Sanger Sand and Gravel Plant*”). A violation of the NPDES Permit is a violation of the CWA. The Facility is not subject to a federal storm water permit at this time, however, storm water discharges from the Facility are covered under NPDES Permit No. CA0078174.

2. *The Activity Alleged to Constitute a Violation.*

Most often, the NPDES Permit standards and limitations allegedly violated are self-explanatory, and an examination of the language of the NPDES Permit itself is sufficient to inform the Discharger of its failure to fully comply with the NPDES Permit requirements. This is particularly so since the Discharger is responsible for monitoring its operations to ensure compliance with all Permit conditions. River Watch sets forth the following narratives, which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records (*e.g.*, Self-Monitoring Reports (“SMRs”) filed by the Discharger for the Facility, and the California Integrated Water Quality System (“CIWQS”) reporting system) relating to operations at the Facility. Additional records and other public documents in the Discharger’s possession or otherwise available to the Discharger regarding the NPDES Permit may, upon discovery, reveal additional violations.

River Watch contends that from December 1, 2013 through December 1, 2017, the Discharger violated the Act and the following identified requirements of the NPDES Permit with respect to its effluent discharges including unreported Receiving Water Limitation violations. These reported violations are identified in the SMRs by violation number, date of alleged violation, and pollutant. The following prohibitions apply to the Discharger:

Reported Violations

A. Receiving Water Limitations

Receiving water limitations are based on water quality objectives (“WQOs”) contained in the Basin Plan, consistent with the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* and are a required part of the NPDES Permit. The NPDES Permit prohibits the Discharger from causing a violation of the receiving water limitations identified in Section E. Receiving Water Limitations, of the NPDES Permit.

River Watch alleges that despite some remedial actions, the unpermitted discharge of polluted waste from the Facility is ongoing. Publicly reported sampling results indicate pollutants continue to be discharged from the Facility to waters of the United States, and that remedial measures to date have been unsuccessful in preventing continued releases of Turbidity, pH and other wastes which exacerbate the already impaired condition of the Kings River and its tributaries. These violations are identified in the SMRs by the parameter being sampled, sample result, and date of sample. The following prohibitions apply to the Discharger:

I. Exceeding Receiving Water Limitations for Temperature

Water temperature has direct and indirect effects on nearly all aspects of stream ecology. The amount of oxygen that can be dissolved in water is partly governed by temperature. As cold water can hold more oxygen than warm water, certain species of aquatic invertebrates and fish with high oxygen demands (including popular sport fish such as some trout and salmon) are found only in these waters. Temperature also influences the rate of photosynthesis by algae and

aquatic plants. As water temperature rises, the rate of photosynthesis increases providing there are adequate amounts of nutrients. This results in the growth of algae and other vegetation which increases biological oxygen demand (BOD) and further decreases the level of oxygen available for endangered fisheries.

The Discharger has admitted to discharging to receiving water limitations in violation of the following NPDES Permit conditions:

- Order No. R5-2013-0105, V. Receiving Water Limitations. A. "The discharge shall not cause the following in Kings River:", 17. The natural temperature to be increased by more than 5 degrees F.

1 Temperature increase of 5.6 degrees F when the limit is 5.0 degrees F.
(Event ID- 1010342 on 5/12/16)

II. Exceeding Receiving Water Limitations for Turbidity.

The Discharger has admitted discharging effluent in violation of the following permit conditions:

- Order No. R5-2013-0105, V. Receiving water limitations, A. "The discharge shall not cause the following in Kings River:" 19. Turbidity to increase more than: 1 NTU where natural turbidity is between 0 and 5 NTUs.

1 Turbidity increase of 3.9 NTU.
(Event ID- 1010343 on 5/25/16)

B. Exceeding Effluent Water Limitations for Monitoring and Reporting:

The Discharger has discharged effluent in violation of the following permit conditions:

- Order No. R5-2013-0105, Monitoring And Reporting Program, E.II. Monitoring Locations: The Discharger shall establish and monitor the following locations to demonstrate compliance with the effluent limitations, discharge specifications, and other requirements in Table E-1.

12 Effluent Discharges with Deficient Monitoring:

1 deficient monitoring on 1/1/14 (Event ID: 1002310)
1 deficient monitoring on 2/1/14 (Event ID: 1002311)
1 deficient monitoring on 8/1/14 (Event ID: 1002317)
1 deficient monitoring on 9/1/14 (Event ID: 1002319)
1 deficient monitoring on 10/1/14 (Event ID: 1002320)
1 deficient monitoring on 11/1/14 (Event ID: 1002322)
1 deficient monitoring on 12/1/14 (Event ID: 1002323)
1 deficient monitoring on 1/1/15 (Event ID: 1002324)

- 1 deficient monitoring on 2/1/15 (Event ID: 1002325)
- 1 deficient monitoring on 3/1/15 (Event ID: 1002326)
- 1 deficient monitoring on 4/1/15 (Event ID: 1002327)
- 1 deficient monitoring on 5/1/15 (Event ID: 1002328)

Unreported Violations

A. Exceeding Receiving Water Limitations for Temperature

These unreported violations are identified in the Discharger's SMRs by the parameter being sampled, sample result, and date of sample. The sampling results show exceedances but they are not reported as violations.

The Discharger has discharged effluent in violation of the following permit conditions:

- Order No. R5-2013-0105, V. Receiving Water Limitations. "The discharge shall not cause the following in Kings River:", 17. Temperature. The natural temperature to be increased by more than 5 degrees F.

6 Effluent Discharges Exceeding the Permit Limit for Temperature:

- 1 exceeding maximum temperature difference with a 5.6 degree F difference on 5/25/16
- 1 exceeding maximum temperature difference with a 5.76 degree F difference on 6/5/15
- 1 exceeding maximum temperature difference with a 9.4 degree F difference on 10/14/15
- 1 exceeding maximum temperature difference with a 75.48 degree F difference on 5/15/14
- 1 exceeding maximum temperature difference with a 71.55 degree F difference on 5/23/14
- 1 exceeding maximum temperature difference with a 7.7 degree F difference on 12/5/14

B. Exceeding Receiving Water Limitations for pH

The pH of a stream affects organisms living in the water. Excessively high and low pH levels can be detrimental for the use of water. A changing pH in a stream can be an indicator of increasing pollution or some other environmental factor. A pH level of five is ten times more acidic than water, low pH in water will corrode or dissolve metals and other substances.

The Discharger has discharged effluent in violation of the following permit conditions:

- Order No. R5-2013-0105, V. Receiving Water Limitations. "The discharge shall not cause the following in Kings River", 9. The pH to be depressed below 6.5 nor raised above 8.3.

8 Effluent Discharges Exceeding the Permit Limit for pH below 6.5, exceed 8.3:

1 exceeded the below limit to 5.5 SU on 1/27/17
1 exceeded the below limit to 6.47 SU on 5/25/16
1 exceeded the upper most limit at 8.46 SU on 4/24/15
1 exceeded the upper most limit at 8.35 SU on 5/23/14
1 exceeded the upper most limit at 8.44 SU on 5/30/14
1 exceeding the below limit to 6.38 SU on 7/3/14
1 exceeding the below limit to 5.9 SU on 7/10/14
1 exceeding the below limit to 6.3 SU on 7/17/14

C. Exceeding Effluent Limitations for pH

The Discharger has discharged effluent in violation of the following permit conditions:

- Order No. R5-2013-0105, A. Effluent Limitations: The Discharger shall maintain compliance with the following effluent limitations. pH instantaneous minimum is 6.5, instantaneous maximum is 8.

14 Effluent Discharges Exceeding the Permit Limit for pH below 6.5:

1 exceeded the lower limit with a sampling result below 6.5 on 1/10/17
1 exceeded the lower limit with a sampling result below 6.5 on 2/4/16
1 exceeded the lower limit with a sampling result below 6.5 on 2/12/16
1 exceeded the lower limit with a sampling result below 6.5 on 2/15/16
1 exceeded the lower limit with a sampling result below 6.5 on 1/23/15
1 exceeded the lower limit with a sampling result below 6.5 on 9/11/15
1 exceeded the lower limit with a sampling result below 6.5 on 9/18/15
1 exceeded the lower limit with a sampling result below 6.5 on 11/24/15
2 exceeded the lower limit with a sampling result below 6.5 on 12/4/15
2 exceeded the lower limit with a sampling result below 6.5 on 12/11/15
2 exceeded the lower limit with a sampling result below 6.5 on 12/18/15

3. *The Person or Persons Responsible for the Alleged Violations.*

The entities responsible for the alleged violations identified in this Notice are CalMat Co., and Vulcan Materials Company as owner(s) and operator(s) of the Facility and its operations, as well as those of the Discharger's employees responsible for compliance with the NPDES Permit and the CWA.

4. *The Location of the Alleged Violation.*

The Discharger owns and operates the Sanger Sand and Gravel excavation and processing Facility. Information available to River Watch indicates some portion of the real property upon which the Facility is located is owned by Walter A. and Elizabeth A. Baun, and Darrell B. and Janet Delevan. In the event those individuals are found to be responsible in some manner for the CWA violations detailed in this Notice letter, a subsequent Notice will issue.

The Discharger manufactures, distributes, and markets construction materials such as crushed rock, sand, gravel, hot-mix asphalt, and ready-mix concrete. Water (consisting of a mixture of groundwater and recycled water from the supply pond) is used to wash aggregate at the aggregate processing plant. The process wastewater is discharged to a settling pond and then to a supply pond. The impounded processed water in the supply pond is either recycled back for re-use in processing or discharged through a porous cobble/aggregate levee at Discharge Point 001 to the Kings River, a water of the United States, between Faint-Kern Canal and Peoples Weir within the South Valley Floor Hydrologic Unit, Consolidated Hydrologic Area.

The Kings River is a major river flowing from the Sierra Nevada into the San Joaquin Valley within Fresno County and Kings County. At about 125 miles long, the Kings River has its headwaters about 13,000 feet along the Sierra crest. The Kings River is impounded in Pine Flat Lake before flowing into the Central Valley south of Fresno, where it is used primarily for irrigation. From here the Kings River joins the San Joaquin River eventually reaching San Francisco Bay via the Sacramento-San Joaquin River Delta.

5. *The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is from December 1, 2013 to December 1, 2017. River Watch may from time to time update this Notice to include all violations of the CWA by The Discharger which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Service Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, # 817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the Discharger's staff to tailor remedial measures to the specific operations of the Facility.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified herein. Members of River Watch may use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day "notice period"** to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit of the Facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of its NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

Service List

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

✓ Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
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Sacramento, CA 95812-0100

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